

REMARKS

This is intended as a full and complete response to the Office Action dated April 15, 2004, having a shortened statutory period for response set to expire on July 15, 2004. Please reconsider the claims pending in the application for reasons discussed below.

In the specification, the title has been changed as indicated above.

Claims 1-48 are pending in the application. Claims 1-18, 23-34 and 49-50 remain pending following entry of this response. Claims 1, 2, 23, 24 and 30 have been amended. New claims 49-50 have been added to recite aspects of the invention. Applicants submit that the amendments and new claims do not introduce new matter.

Claims 19-22 and 35-48 have been cancelled, without prejudice. These claims are canceled as a result of having been restricted and withdrawn from consideration by the Examiner. Accordingly, Applicants reserve the right to file a divisional application pursuing these canceled claims. Regarding the Examiner's restriction in the present Action (mailed April 15, 2004; no paper number noted on cover sheet), Applicants make a few observations. In particular, Applicants note that the Examiner suggests that the Applicants argue a lack of enablement for claim 35. Respectfully, no such argument was made by Applicants. A careful review of the Applicants response reveals that the Applicants stated "that it is unclear as to how invention IV is capable of "receiving a refund" as suggested by the Examiner" (emphasis added). The Applicants' statement makes no characterization regarding the enablement of claim 35, but rather expresses that the Examiner's position is unclear. Furthermore, the Examiner denies having made such a statement (see, page 3 of the Examiner Action mailed April 15, 2004, where the Examiner states that "the Examiner never stated that the 'invention IV is capable of receiving a refund.'"). Accordingly, the Examiner confirms an apparent misunderstanding on the part of the Applicant regarding the Examiner's position.

The Examiner has withdrawn claims 19-22 and 35-48 from further consideration pursuant to 37 C.F.R. § 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Accordingly, Applicants has canceled claims 19-22 and 35-48 without prejudice and reserves the right to pursue these claims in continuing applications.

Claims 6, 18, 28 and 33 are also withdrawn from further consideration pursuant to 37 C.F.R. § 142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. However, because Applicants believe claims 1 and 23 are now allowable, their respective dependents are also believed to be allowable. Accordingly, these claims are not canceled at this time.

Claims 3, 5, 23, 27, 29-32 and 34 stand rejected under 35 U.S.C. § 112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicants respectfully traverse the rejection.

Examiner states the claims are "replete with errors". As an example, the Examiner states that Claims 3 and 5 are unclear because it is not known if the steps recited are 'in addition to' or 'in place of' of the steps recited in claim 1. It is well established that a proper dependent claim further limits the claim from which it depends. In this case, claim 1 recites "transmitting, via a network connection established through a network interface of the vending machine, a request for the item". Thus, Claim 1 recites transmitting a request for an item via a network connection. However, a destination of the request is not explicitly recited. Claim 3 recites that "transmitting comprises transmitting the request to the at least one other vending machine." Accordingly, Claim 3 explicitly recites a destination of the transmitted request. Claim 3 is therefore sufficiently definite and consistent with the requirements of dependent claims. The same applies for Claim 5. Regarding claim 23, the Examiner states "the scope of the invention is unclear because Applicants have recited actions that occur outside the single "medium" and "processor" ("in a network of vending machines..."). Claim 23 recites "receiving, at a vending machine in the network of vending machines, a purchase order for the item". Accordingly, the gerund "receiving" is the operation implemented by the program resident on the medium and being executed by the processor. The recitation of "at a vending machine in the network of vending machines" is a limitation indicating where the "receiving" takes place. In other words, execution of the medium-resident program by the processor implements an operation that includes receiving a request at a vending machine in the network of vending machines. Applicants have restructured the claim in an effort to clarify what is being claimed.

Claims 27, 29-32 and 34 are presumably rejected on similar grounds and are therefore traversed for similar reasons given above. Accordingly, Applicants respectfully request withdrawal of the rejection.

Claims 1-5, 7-16 and 18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by *Yap et al.* (US 6,711,464; hereinafter *Yap*). Applicants respectfully traverse the rejection.

Yap provides a system for distributing media content (e.g., audio or video). (See, e.g., Abstract.) *Yap* does not provide for receiving a purchase order for an item at a vending machine in a network of vending machines, transmitting, via a network connection established through a network interface of the vending machine, a request for the item, and then receiving, at the vending machine, a response to the request indicative of whether the item is available at at least one other vending machine, where each of the vending machines are configured to dispense items for pickup by users at the respective machines. In other words, *Yap* does not teach at least two networked vending machines, each capable of dispensing items, where a first vending machine can issue a request for an item to a second vending machine. *Yap* provides only for a single vending machine 112 and a server 524 in communication with one another. (See, e.g., col. 4, lines 12-16.) The server is not a vending machine capable of dispensing items; rather the server 524 can only transmit media content to the vending machine 112 which then dispenses an item, i.e., a CD. (*Id.*) The vending machine 112 may be configured to send a request for media content to the server 524, but it cannot send a request to another vending machine for an item, e.g., to identify a vending machine having CDs in stock. Nor can the vending machine 112 receive responses indicative of whether an item is available at another vending machine. Accordingly, *Yap* does not teach, show or suggest a vending machine transmitting a network request for an item; nor does *Yap* teach, show or suggest receiving, at the vending machine, a response to the request indicative of whether the item is available at at least one other vending machine; nor does *Yap* teach, show or suggest a combination of these steps. Therefore, the claims are believed to be allowable and allowance of the same is respectfully requested.

Claims 1-5, 7-16 and 18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Jenkins et al.* (US 6,264,104; hereinafter *Jenkins*). Applicants respectfully traverse the rejection.

Jenkins provides a system including a plurality of electronic catalogue devices connected to a host device 300. (See, e.g., col. 2, lines 1-54; Figure 1.) The host device is "associated with a service infrastructure to enable delivery of the goods/services and keeping of user accounts." (Col. 2, lines 52-54.) Accordingly, the host device 300 is not a vending machine and *Jenkins* specifically requires that purchases handled by the host device are handled by a service infrastructure (also not vending machine) which handles delivery of items to the user. Thus, while *Jenkins* teaches a local vending machine (col. 3, lines 44-52), *Jenkins* does not teach, show or suggest at least two vending machines where a first vending machine determines availability of item at a second vending machine. Accordingly, the claims are believed to be allowable and allowance of the same is respectfully requested.

Claims 1-5, 7-16 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Yap*. However, Applicants believe that rejections based on *Yap* have been overcome for reasons given above. In addition, a rejection under 35 U.S.C. § 103(a) requires a showing of motivation for the proposed combination. See, MPEP §2143. In this case, the Examiner has provided no motivation, thereby rendering the rejection improper. Accordingly, the claims are believed to be allowable and allowance of the same is respectfully requested.

Claims 1-5, 7-16 and 18 stand rejected under 35 U.S.C. § 103(a) as being anticipated by *Jenkins* in view of *Schwartzendruber* (US 5,207,784). However, Applicants believe that rejections based on *Jenkins* have been overcome for reasons given above. In addition, it is unclear what the Examiner means by an "aging sale item". Accordingly, the claims are believed to be allowable and allowance of the same is respectfully requested.

Claims 23, 27, 29-32 and 34 stand rejected under 35 U.S.C. § 103(a) as being anticipated by *Yap*. However, Applicants believe that rejections based on *Yap* have been overcome for reasons given above. Accordingly, the claims are believed to be allowable and allowance of the same is respectfully requested.

Claims 23, 27, 29-32 and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Jenkins* in view of *Schwartzendruber* (US 5,207,784). However, Applicants believe that rejections based on *Jenkins* have been overcome for reasons given above. Accordingly, the claims are believed to be allowable and allowance of the same is respectfully requested.

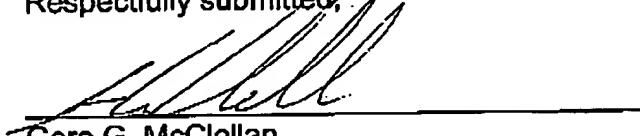
Regarding issues of claim construction raised by the Examiner, Applicants note that current examination the claims are given their "broadest reasonable interpretation..." *In re Morris*, 127 F. 3d 1048, 1054 (Fed. Cir. 1997). The rationale behind this policy is that claims interpreted in this manner are more likely to sustain a finding of patentability during post examination legal proceedings. Accordingly, Applicants do not at this time concede or deny any particular definitions for the claim terminology and assume that the Examiner will give the present claims their broadest reasonable interpretation. Issues of lexicography may be resolved during prosecution as needed.

The Examiner's invitation for an interview is acknowledged and appreciated. Given the number of issues to be addressed in this present office action, Applicants felt a written response to be appropriate at this time. Subsequent communications may be more effectively handled by way of a telephone interview, which Applicants welcome.

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to the Applicants' disclosure than the primary references cited in the office action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this office action.

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,



Gero G. McClellan
Registration No. 44,227
MOSER, PATTERSON & SHERIDAN, L.L.P.
3040 Post Oak Blvd. Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Applicant(s)